United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

74-1260

T-3181

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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WILLIAM S. PARISI, as father and
natural guardian of
VALERIE M. PARISI, an infant,

Plaintiff-Appellant

P/S

-against-

CASPAR WEINBERGER, SECRETARY OF
HEALTH, EDUCATION, AND WELFARE

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WILLIAM S. PARISI, as father and natural guardian of VALERIE M. PARISI, an infant,	:	73-C-464
Plaintiff-Appellant,	:	(District Court)
-against-	:	T-3181
CASPAR WEINBERGER, Secretary of Health, Education, and Welfare.	:	
Defendant-Appellee.	:	

APPELLANT'S BRIEF

PRELIMINARY STATEMENT

This is an appeal from a Judgment of Dismissal of the District Court for the Eastern District of New York entered January 7, 1974, based upon a Memorandum of Decision and Order dated December 27, 1973 which granted summary judgment to appellee and denied summary judgment to appellant in this action brought pursuant to 42 U.S.C.405 (g) to review the determination of the Secretary of Health, Education, and Welfare which denied appellant's application for reentitlement to social security children's benefits for his daughter.

STATUTES INVOLVED

42 U.S.C.405

Review.

"(g) Any individual after any final decision of the Secretary made after a hearing to which he was a party . . . may obtain a review of such decision by a civil action . . . The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive . . ."

42 U.S.C.402(d)

"(d) (1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, i such child--

(A) has filed application for child's insurance benefits,

* * * * *

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs--

(D) the month in which such child dies or marries,

* * * * *

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1) (D) has occurred) beginning with the first month thereafter in which he--

(A) (i) is a full-time student or is under a disability (as defined in section 423(d) of this title), and (ii) had not attained the age of 22, or" --

QUESTION PRESENTED

Has the defendant excluded the claimant from re-entitlement to benefits pursuant to valid regulations promulgated to carry out the mandate of the Congress to provide funds for orphans under 22 years of age while attending school on a full time basis, or are such regulations as promulgated and construed overly restrictive and defeative of such Congressional intent and therefore to be set aside or re-construed by the Court?

STATEMENT OF FACTS

It is perceived from the pleadings and the administrative record filed with the Answer that there are no real questions of fact; rather, the only issue is whether on these undisputed facts the infant is re-entitled to such benefits. Therefore, the "substantial evidence rule" which usually applies in such reviews of administrative determinations is peculiarly inapplicable to the resolution of the legal questions of this action.

On March 5, 1967, Aida A. Parisi, mother of the infant claimant, died, fully insured under applicable provisions of the Social Security Act. The infant claimant was found entitled to child's insurance benefits and did receive same. The infant claimant married one Charles G. Baldwin on September 12, 1970, which marriage was thereafter terminated due to the fault of the husband (as determined by a court of competent jurisdiction), the termination date of said marriage being on September 5, 1971. No findings granting alimony or support was made and none requested.

The infant was at all relevant times herein a full-time student at Pembroke College of Brown University and under the age of 22 years. (p.2 of Judge Travia's Memorandum of Decision).

Following the aforesaid divorce, the infant made prompt application for re-entitlement of benefits which she had previously been receiving, the said benefits having terminated upon the happening of the marriage.

The defendant has refused to give such benefits. Plaintiff has pursued her administrative remedies to no avail, and now brings this action to have this court review the declination to re-entitle the infant.

Although the complaint alleges that the infant should not have had her benefits terminated upon marriage (paragraph 8 of the Complaint), plaintiff now abandons this claim and limits this action to a review of the propriety of the refusal of the defendant to re-entitle the infant to benefits upon the happening of the divorce (paragraph 9 of the Complaint).

THE ADMINISTRATIVE LAW JUDGE'S DECISION

At the hearing, the Administrative Law Judge (A.L.J.) stated, at page 29 of the transcript:

> "MR. PARISI, I assure you that I will give every consideration to your argument. I think it is fair to state however, that my authority to venture into an area of interpretation is rather circumscribed. I act in this matter, by virtue of a statute, a

> statute which you are familiar at in least in part, requires that certain procedures be followed before the matter can come to me. My legal authority does not begin to exist until these administrative procedural steps have been accomplished. On the other hand, in dealing with the matter, I am constrained to follow the statute at such authoritative precedence as I find in the regulations and in rulings which are made by the Social Security Administration. I am not suggesting that Social Security rulings are necessarily a source of law but they are authoritative, so far as my function is concerned, and I am constrained to follow them . . . (emphasis supplied).

A reading of the A.L.J's decision, at page 9 of the transcript, then shows that the decision or ruling that he feels constrained to follow is Social Security Ruling 67-33 (Cum. Bul. 1967 p. 23), which does seem reasonably on point to the instant action.

Thus, the A.L.J. is clearly stating that he is not free to overrule this Social Security Ruling, at his level, and that he is bound by such precedent. However, this Court is not similarly bound, quite obviously, if it should find, as we argue, such interpretation does harm to the statutory scheme envisioned by the Congress.

POINT I

> THE CONGRESS, IN ENACTING THE SOCIAL SECURITY ACT, AND MORE PARTICULARLY CHILDREN'S BENEFITS, CREATED BROAD, LIBERAL AND REMEDIAL LEGISLATION INTENDED TO PROVIDE FUNDS FOR INFANTS SUCH AS THE PLAINTIFF HEREIN UNDER THE CIRCUMSTANCES HEREIN PRESENT.

"It is a familiar maxim of statutory interpretation that courts should enforce a statute in such a manner that its overriding purpose will be achieved, even if the words used leave room for a

contrary interpretation. (citations). Here the broad remedial aim of the statute is captured not only in the words as enacted, but in the legislative history as well:

> 'The committee believes it is now appropriate and desirable to provide social security benefits for children between the ages of 18 and 22 who are full-time students and who have suffered a loss of parental support * * *
> (P)roviding benefits up to age 22 would mean that many children's benefits could continue for the time it takes to complete a 4-year college course. * * *
> S. Report No.404, 89th Cong., 1st Sess., reprinted in 1965 U. S. Code Cong. and Admin.News 1943 pp.2036-37' ".

Haberman v. Finch, 418 F.2d664, 666-67 (C.A. 2, 1969). The court adds that this statute "is a remedial statute, to be broadly construed and liberally applied.", at page 667.

See, also, Herbst v. Finch, 473 F.2d 771 (C.A. 2, 1972) to the effect that federal social security legislation requires a court to interpret its provisions liberally, and any doubts should be resolved in favor of coverage.

Nor can exclusions be accomplished by resort to overly-formalistic interpretations, Widermann v. Richardson, 451 F.2d 1228 (C.A. 2, 1971), reversing 329 F. Supp.636 (E.D.N.Y. 1971).

This statute has a "moral purpose", Conklin v. Celebrezze, 319 F.2d569, 571 (C.A. 7, 1963).

Obvious exceptions must be read into the statute where to do so is necessary to effectuate its purpose, Schmiedigin v. Celebrezze, 245 F. Supp. 825 (D.D.C. 1965).

Further, it must be kept in mind that a claimant is not a recipient of a gratuity, Haberman v. Finch, supra, but rather a person whose parent contributed a substantial portion of her income to the Social Security fund for many years, so that her daughter might go to college. The court might note that the decedent worked from 1942 to March, 1967, at Expert Coat Co., a period of twenty-five years (Page 42 of the transcript, exhibit 7).

POINT II

THE CONGRESS COULD NOT HAVE INTENDED TO HAVE INFANT CLAIMANT EXCLUDED FROM REENTITLEMENT TO BENEFITS UPON THE HAPPENING OF THE DIVORCE HEREIN.

The statute which confers children's insurance benefits has written into it four "terminating factors". That is, if any one of four events happens, the benefits cease. They are:

1) death of the child;
2) adoption of the child;
3) attainment of age 18 and the child not going to school, or attainment of age 22 even if going to school;
4) marriage of the child.

The rationale underlying the first one above is obvious: the death terminates any need for support. The second event, adoption, operates to terminate the benefits because of the probable support of the infant by the adopting parent. Again, the

termination upon attainment of age 18 (while not attending school) has as its rationale the probability that the infant may obtain gainful employment and be self-sufficient, and therefore not in need of benefits. Underlying the exclusion or termination that comes about with marriage is that the infant now has anouther source of support: the working spouse.

The Court of Appeals for this circuit has indicated that these exclusions are based not upon any question of actual need of the infant, but on the theory of probably need. Florio v. Richardson, 469 F.2d 803 (C.A. 2, 1972).

Thus, it should be clear that the theory of exclusion or termination upon death or adoption is valid. Each of these events is a final one; one can not un-die or become un-adopted. For this reason, it is sound to say that the happening of such an event operates to terminate on a permanent basis, since in the event of adoption there is a "probable" support being provided, c.f. Florio v. Richardson, supra.

However, marriages do become un-done and, as admitted by the pleadings, the infant's marriage herein became un-done without fault on her part. Having been divorced, she cannot be presumed to be receiving support. There is no presumption that alimony flows with divorce. In marriages of short duration, it has been the experience

of the writer that almost invariably there are no alimony or support awards. Thus, upon the happening of the divorce, there cannot be said to be a "probable" source of support as indicated in Florio v. Richardson, supra.

In fact, it is far more probably that an infant would have no source of support after a divorce, and the likelihood of having to leave school would frequently be a concomittant of a termination of child's support and marital support.

The end result would be contrary to that intended by Congress, as set forth in the quoted language from Haberman v. Finch, supra. The obvious Congressional intent was to have Social Security provide a source of support for the full-time student under 22 where another source was not probably available. To the extent that infant plaintiff's marriage has ended, there is a loss of that probable source of support. Thus, it should be apparent that Congress would have intended the infant then to become reentitled to the benefits.

It is then for the Court to fashion an interpretation of this statute consonant with Congressional interpretation and intent. The A.L.J. could not do so because of his candid admission that he was constrained by administrative precedent. The District Court chose not to do so, erroneously, we submit. The court herein is not so encumbered.

This court may, indeed, should, carry out the obvious legislative intent expressed hereinbefore by holding that an infant who would otherwise be entitled to benefits and had been receiving them is entitled to have such benefits resume upon the grant of a divorce to the infant prior to age 22, while still a full-time student.

The defendant argues that the act of marriage operates to exclude benefits, while the plaintiff argues that it is the act of marriage, combined with the continuing fact of marriage, which operates to exclude. When the fact of marriage is no longer, the exclusion or termination should no longer operate. The court may properly find that the statute never intended to operate to exclude a person from such benefits after the marriage ends.

Such a ruling would be in no way a mere act of charity, but it would derive from the court's inherent duty to construe statutes, and to give to an admittedly remedial statute a broad and liberal interpretation which would operate to carry out its general intent, even if some of its language might arguably be construed to prohibit such a result if given a literal, overly-narrow and unduly restrictive interpretation.

CONCLUSION

Plaintiff-Appellant respectfully urges this Court to reverse the judgment of the District Court and grant summary judgment to the plaintiff and to remand this matter to the defendant with instructions for it to confer benefits upon infant plaintiff from the termination of her marriage, and grant such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

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CITATIONS